THE CONSERVATION OF BUSINESS OPPORTUNITY[1]

Mr. George W. Perkins has pithily put the case for large business and industrial combination in the form of the following questions:

First: Has labor been benefited? Has labor been given steadier employment and higher wages?

Second: Has the consumer been benefited? Has the consumer been given a better article, and at a lower price?

Third: Have ways and means been devised and capital provided for saving and utilizing waste products which could not have been done by similar concerns?

Fourth: Has our financial fabric been strengthened? Has more stability been given to business and better security to the investments in which the people have placed their money?

Fifth: Have our foreign trade balances been expanded? Have we put our nation in the way of having stronger weapons for use in our struggle for our full share of the commerce of the world?

To each of Mr. Perkins' questions, the answer, of course, is pretty generally "Yes." Notwithstanding Mr. Perkins' catechism, however, that tangle of economic, political, and social questions, which, for lack of a better name, we loosely call the trust problem, still vexes us, unsolved. Plainly, the important factor in the trust problem today is something that Mr. Perkins' catechism leaves untouched.

At this juncture, the process of elimination may help us. As the answers to Mr. Perkins' questions show, the ultimate consumer, the employee, and the investor in the securities of the so-called trusts have, by and large, greatly benefited. The trust problem today, therefore, must depend for its solution upon some element lying outside these three classes, and engaged in what, for convenience, may be called "independent business." In Mr. Perkins' own fashion, this factor may be brought into view by putting the following questions: Has combination unreasonably narrowed the field of "independent business"? Has it made it harder for men of enterprise and ability to engage in business on their own account?

[1] A paper read before the Western Economic Society, at Chicago, March 2, 1912.

The conservation of business opportunity is today the avowed object of our national policy in respect to large business. "The real purpose of the Sherman law," says Mr. Wickersham, the attorney-general of the United States, "is to compel fair trade, to protect the average business man from injury due to unfair methods of competition. It is meant to keep the highways of commerce open to all, big and little, rich and poor, on the same terms. Therein lies its greatest ethical value."[1]

How shall business opportunity be conserved? How shall trade be kept "fair"? How shall "the average business man be protected from injury due to unfair methods of competition"? How shall the "highways of commerce be kept open to all, big and little, rich and poor, on the same terms"? As Mr. Wickersham well says, these questions touch the "greatest ethical value." They lie at the heart of the present industrial situation. Minor evils—such as imperfect corporation laws, indefiniteness in the interpretation of the Sherman Anti-Trust act, and improper secrecy in corporate acts affecting investors and the state—may conceivably be relieved by federal incorporation acts, federal licenses for corporations, greater publicity for corporate transactions, and federal commissions for regulating corporations. But not until these ethical questions are answered can the trust problem ever be solved.

The law cannot answer these questions. Even the word "unfair," as applied to trade or competition, is outside the vocabulary and beyond the conception of the law. So Lord Justice Bowen, giving judgment in the Court of Appeals of Great Britain,[2] says:

> We were told that competition ceases to be the lawful exercise of trade, and so to be the lawful excuse for what will harm another, if carried to a length which is not fair or reasonable. The offering of reduced rates by the defendants in the present case is said to have been "unfair." This seems to assume that, apart from fraud, intimidation, molestation, or obstruction of some other personal right *in rem* or *in personam*, there is some natural standard of "fairness" or "reasonableness"—to be determined by the internal consciousness of

[1] "The Enforcement of the Anti-Trust Law," *Century Magazine*, February, 1912.

[2] *Mogul Steamship Company* v. *McGregor, Gow & Company* (1889), 23 Q.B.D. 598, Court of Appeals.

judges and juries—beyond which competition ought not in law to go. There seems to be no authority, and I think, with submission that there is no sufficient reason, for such a proposition. It would impose a novel fetter upon trade. The defendants, we are told by the plaintiff's counsel, might lawfully lower rates, provided they did not lower them beyond a "fair freight," whatever that may mean. But where is it established that there is any such restriction upon commerce? And what is to be the definition of a "fair freight"? It is said that it ought to be a normal rate of freight, such as is reasonably remunerative to the shipowner. But over what period of time is the average of this reasonable remunerativeness to be calculated? All commercial men with capital are acquainted with the ordinary expedient of sowing one year a crop of apparently unfruitful prices in order, by driving competition away, to reap a fuller harvest of profit in the future; and until the present argument at the bar it may be doubted whether ship-owners or merchants were ever deemed to be bound by law to conform to some imaginary "normal" standard of freight or prices or that law courts had a right to say to them, in respect of their competitive tariffs, "Thus far shalt thou go and no farther."

To attempt to limit English competition in this way would probably be as hopeless an endeavor as the experiment of King Canute. But on ordinary principles of law no such fetter on freedom of trade can, in my opinion, be warranted.

Mr. Justice Peckham, expressing the opinion of the Supreme Court of the United States,[1] voices the same view:

Competition, free and unrestricted, is the general rule which governs all the ordinary business pursuits and transactions of life. Evils, as well as benefits, result therefrom. In the fierce heat of competition, the stronger competitor may crush out the weaker; fluctuations in prices may be caused that result in wreck and disaster; yet, balancing the benefits as against the evils, the law of competition remains as a controlling element in the business world.

Before these ethical questions of "fair" and "unfair" trade and competition, the law has stood, for centuries, like the Sphinx, stony, unheeding, and silent. The reason why this must be so was expressed in several brilliant, dialectical passages by Chief Justice White, writing the opinion of the Supreme Court in the Standard Oil case[2]:

Nowhere at common law can there be found a prohibition against the creation of monopoly by an individual. This would seem to manifest, either consciously or intuitively, a profound conception as to the inevitable operation of economic forces and the equipoise or balance in favor of the protection of

[1] *U.S.* v. *Trans-Missouri Freight Association* (1897), 166 U.S. 290, 337.

[2] *Standard Oil Co.* v. *U.S.* (1911), 221 U.S. 55, 56, 62.

the rights of individuals which resulted. . . . . This was but an instinctive recognition of the truisms that the course of trade could not be made free by obstructing it, and that an individual's right to trade could not be protected by destroying such right. . . . .

And it is worthy of observation, as we have previously remarked concerning the common law, that although the statute [i.e., the Sherman Anti-Trust act] by the comprehensiveness of the enumerations embodied in both the first and second sections makes it certain that its purpose was to prevent undue restraints of every kind or nature, nevertheless by the omission of any direct prohibition against monopoly in the concrete it indicates a consciousness that the freedom of the individual right to contract when not unduly or improperly exercised was the most efficient means for the prevention of monopoly, since the operation of the centrifugal and centripetal forces resulting from the right to freely contract was the means by which monopoly would be inevitably prevented if no extraneous or sovereign power imposed it and no right to make unlawful contracts having a monopolistic tendency were permitted. In other words that freedom to contract was the essence of freedom from undue restraint on the right to contract.

Now, while new legal paraphernalia are so insistently urged as a means of solving the trust problem, it behooves us to remember how ill-adapted is legal science for coping with the ethical questions that lie at the heart of the problem. In his special message to Congress (January 7, 1910) President Taft stated this fact with a firmness which subsequent events have not in the least shaken:

I venture to think that this is to put into the hands of the court a power impossible to exercise on any consistent principle which will insure the uniformity of decision essential to just judgment. It is to thrust upon the courts a burden that they have no precedents to enable them to carry and to give them a power approaching the arbitrary, the abuse of which might involve our whole judicial system in disaster.

Questions so delicate that the highest courts of Great Britain and the United States, trained in the honored maxims and traditions of English jurisprudence, and accustomed through generations to bring the law into unison with the social and economic conditions of the times, have not ventured to answer, or even hazard a guess about, are questions which obviously cannot be settled for a long time to come, either by legal decisions or by legislation.

Whither, then, shall we turn for an answer? Who shall tell us what "fair" and "unfair" trade and competition are, and teach us how, in Attorney-General Wickersham's phrase, "to protect

the average business man from injury due to unfair methods of competition," and how "to keep the highways of commerce open to all, big and little, rich and poor, on the same terms"?

When the independent tobacco people protested against the recent reorganization plan of the American Tobacco Company, they urged upon the Circuit Court[1] that the companies into which the combination was disintegrated under the reorganization ought to be enjoined "from giving away or selling at or below the cost of manufacture and distribution any of its products; from giving rebates, allowances, or other special inducements to purchasers or users; and from refusing to sell to any jobber any special brand he may require; . . . . from espionage on the business of any competitor, from bribery of employees of such competitors, and from obtaining information from any United States revenue official."

To these requests Judge Lacombe, speaking for the court, replied:

> The record in this case shows that these are the common methods of the tobacco business, practiced by all alike. It is only by giving away samples or by offering on favorable terms, irrespective of cost, that new brands of tobacco products can be introduced or old brands extended into new territory. All other companies are free to employ these methods, which are obnoxious to no statute, and there is no reason why the fourteen companies should be forbidden to do so. . . . . Why any one individual or corporation engaged in this business may not acquire such information as he or it can legitimately obtain from private or public sources as to the business of a competitor we fail to see. When illegitimate methods are proved they may be dealt with. This request is denied.

When the independent tobacco people insisted that the companies into which the combination was broken "should be still further disintegrated" and criticized the reorganization plan "because each of these companies is described as 'completely equipped for the conduct of a large tobacco business,' whereas existing independent concerns are none of them so equipped," and further argued "that there can be no effective competition until the several concerns which are to carry forward the business of the trust are put into the same condition as to size and equipment as

[1] *U.S.* v. *American Tobacco Co., et al.*, C.C.S.D., N.Y., 1911.

now prevails among existing independent concerns," Judge Lacombe, speaking for the court, responded:

> Manifestly, the minuter the fragments into which the old combination is split and the more they are prohibited from conducting business as other companies are free to conduct it, the less will be their ability to compete with such other companies. This whole line of argument deals with the economics of the tobacco business. No doubt the novel problem presented to this court is connected with questions of economics as well as with questions of law. But this is a court of law, not a commerce commission, and the legal side of the proposition would seem to be the controlling one.

Rebuffed by the law, and referred by high judicial authority to "economics" and to the "economic side" of these questions, we turn to the economists for an answer.

Undoubtedly others have better right than I to say how satisfactorily the economists have answered these questions. To my thinking, however, their answer seems none too clear or conclusive.

"Obstructing the highways of commerce," many economists say, consists in controlling the sources of raw material and patents. Accordingly, the Attorney-General of the United States recently petitioned for the dissolution of the United States Steel Corporation upon the ground, among others, that "it controlled the bulk of the best coking-coal lands" and that "its holdings of commercially available ores greatly exceeded those of all other iron and steel interests combined." Still more recently, he filed a bill in equity under the Sherman Anti-Trust act against another group of concerns, whose business consisted in manufacturing and leasing machines, which, together, performed an essential series of operations in the manufacture of a necessity of life. In this bill, he prayed that these concerns be dissolved as a combination in restraint of trade, and that every stipulation in the leases covering these machines that required the lessee to use them in combination with any other in the series for which they were designed, and of which they composed a part, should be declared illegal and void; and further, that the concerns which manufactured and leased these machines should be enjoined from making any arrangement with the lessee by which the lessee stipulated, as a condition of using one machine of the series, that he would use another machine of the series. The Attorney-General further prayed that the concerns

which manufactured and leased these machines be enjoined from allowing to the lessee any discount or rebate by way of reducing the royalties upon the machine which they leased for the purpose of inducing the lessee to use their machines exclusively. Although most of the machines to which the Attorney-General referred embodied numerous inventions covered by patents, the Attorney-General expressly claimed in the bill that this fact made no difference.

For the purpose of accomplishing by new statutes the same object at which the Attorney-General aimed in the bill in equity just described, Senator La Follette, Congressman Lenroot, and various other Congressmen have introduced into the present Congress bills, mostly as supplements or amendments of the Sherman Anti-Trust act, which in general forbid any machinery manufacturer to make it a condition of the sale or lease of any machine that the purchaser shall use it only in conjunction with other machinery made by the same manufacturer, each of which machines is made, intended, and designed by the manufacturer to be a perfectly adapted, nicely adjusted working part of a series of machines together performing one industrial operation.

"Unfair" trade and "unfair" competition, many economists tell us, consist in selling goods at prices below the cost of production in localities where a competitor is operating; or selling a specific line of goods at less than the cost of production in order to drive from the field a rival who produces chiefly this line; or refusing to furnish goods at current prices to merchants who buy goods from rival producers.

Inspired by this doctrine, and heedless of the warnings given by the high legal authorities already quoted, many of our state legislatures have enacted laws that prohibit agreements and combinations tending to increase or control prices or to restrain trade, or to restrict competition. With great particularity, they have sometimes prohibited the sale of any goods at more or at less than the "usual cost of production," or the "normal cost of production," or the "usual price," or the "normal price," or at more or less than a "reasonable price," or at more or at less than the price charged by the seller in another locality under "similar circumstances."

Offenses against the statutes have often been made punishable with penalties greater than those provided for the most heinous commercial crimes, for forgery, or even for arson. Five or ten years imprisonment, fines running into thousands of dollars, forfeiture of corporate rights, ouster of the privilege of doing business within the state, and immunity of customers from liability to pay for goods purchased from offenders against these statutes have frequently been provided.

Thus do economists, public executives, and legislatures encourage each other to put economic doctrine into practice. The proselytes of this school of economics, in politics and out, lack nothing in boldness. Considerations that have given pause to the most thoughtful minds in the highest English and American courts have not daunted them. Unhesitatingly they claim to have found the panacea—again to paraphrase Mr. Attorney-General Wickersham—"to compel fair trade, to protect the average business man from injury due to unfair methods of competition," and "to keep the highways of commerce open to all, big and little, rich and poor, and on the same terms."

Face to face, however, with the consequences of their remedy, disagreement breaks out among the doctors. Somebody must control the sources of raw materials, if they are ever to be developed and utilized. In respect to patents, if invention is to be encouraged and industrial progress assured, the patent system must be preserved in its integrity, and somebody must control the patents. As for discrimination in prices, many of the prohibitions in the laws now on the statute books would, if rigidly enforced, prevent practically every independent concern from competing with the so-called trusts. As Professor Jenks has said:[1]

> Such discriminations may at times be beneficial to society. A rival of a great combination often makes its way by giving special rates on certain articles used as leaders and by discriminations among customers. The principle of discrimination in freight rates on railroads, it is generally conceded, is evil, but railroads are natural monopolies. It is useless to talk of encouraging competition among them. On the other hand, the so-called trusts are industries which are normally competitive, and we wish to keep them so. If, then, rivals in

[1] Jeremiah W. Jenks, "How Congress May Control Trusts," *Outlook*, December 13, 1902.

competitive trade against the great corporations get their start by special rates to individual customers and by making leaders of individual articles, to compel them to sell to all customers at the same rate is against free competition, as the word is ordinarily used. Will the limitation of free action harm most the trust or its rival?

A small flouring mill in southern New York sells flour, let us say, in its own town, in Owego and Elmira, N.Y., in Wilkes-Barre and Scranton, Pa., and in Phillipsburg and Dover, N.J. It is engaged in interstate commerce. It must sell in the face of competition of the great Minneapolis mills and of the so-called flour trust. Freight rates from Minneapolis are substantially the same to all these points; in them all flour of the same brand sells at practically the same price. The local New York miller must meet these prices, freights included. In consequence, as his freights differ, he sells to each town at a different rate. His profits from each differ. He does not sell to all at the same rate and then add the freight, as does his great rival. If the law of no discrimination is enforced on him in the same way as on the trust—and the law cannot be a respecter of persons—he is confined to his local New York market, cannot sell enough to keep his mill running, and stops. The act indicated, rigidly enforced, would close hundreds of small mills in all sections of the country, and would stop thousands of men in other lines.

In the face of this testimony, it must be conceded that the economists, confronted by the question of how to conserve business opportunity, have returned a verdict of disagreement.

The judges and lawyers having failed us, and the economists having left us no less in doubt than we were before, let us take the advice that Mr. Perkins so urgently offers, and give the business men a chance at the problem. Let us see what they have done "to compel fair trade, to protect the average business men from injury due to unfair methods of a competitor," and "to keep the highways of commerce open to all, big and little, rich and poor, on the same terms."

Business men are eloquent in results, but seldom in explanations. In the course of the proceedings recently conducted by several committees of Congress, however, the answer of the business men of one industry, as to the mode by which the conservation of business opportunity has been accomplished in that industry, was emphatically brought out.

The boot and shoe industry ranks eighth in importance among the manufacturing industries of the United States. The products of American shoe manufacturers, in the year 1909, amounted to

$442,600,000. This enormous product is made by 1,343 independent concerns. The Massachusetts Commission on the Cost of Living in its recent report declares: "This industry is one of the great lines of industrial enterprise in the United States in which the trust form of control has not made headway."

These 1,343 manufacturers, in the year 1909, had an aggregate capital of $277,468,000. They employed during the year an average of 199,629 employees, to whom they paid in wages the sum of $109,646,000. With the aid of their capital and their employees, they added by their manufacturing operations to the value of the raw materials which they used the enormous sum of $165,163,000. During the ten years from 1899 to 1909, the value of their combined product increased 70 per cent; the amount of their capital increased 178 per cent; the wages of their employees increased 56 per cent, and their exports of boots and shoes to foreign countries increased 657 per cent. How well distributed this prosperity was in the industry appears from the fact that during the same period the commercial ratings of these manufacturers grew from $60,933,250 to $98,629,200—an increase of 62 per cent.

How was this prosperity brought about?

In the ordinary course of news gathering, a Boston newspaper addressed to each shoe manufacturer in the United States several months ago a personal letter, inquiring, in considerable detail, the cause of this prosperity. About half of all the shoe manufacturers responded, and 84.9 per cent of these stated that in their opinion equal benefit would not have resulted had the shoe machinery been less concentrated.[1]

The reasons came clearly into view in the course of hearings recently held by the Senate Committee on Interstate Commerce and the House Committee on Judiciary upon various proposals for trust regulation. The manufacture of shoes requires a greater variety of intricate and expensive machines, in proportion to the value of the product, than is required in almost any other line of manufacture. In the making of a good shoe, no less than fifty-eight different machines, and sometimes twice that number, are used. The utmost nicety is necessary in the adjustment of the

[1] *Boston News Bureau*, December 6, 1911.

various machines in order that all may work together with the greatest economy and efficiency. In the old days, different machines constituting one or more dependent links in the industrial chain of shoe manufacture were furnished by different machinery manufacturers to the shoe manufacturers, either by sale outright or by lease. To purchase the machine outright involved, on the part of the shoe manufacturer, a large initial expenditure, with imminent danger of loss whenever an improved machine came on the market. Many machines, according to an old established practice in the business, were leased to the shoe manufacturer on a rental based wholly or in part on the royalty charged for each shoe passing through the machines. To lease different machines from different machinery manufacturers involved dependence upon many companies for the upkeep and good condition of dozens of machines, the breakdown of any one of which would put out of commission all the other machines to the annoyance and damage of everybody.

In 1899 three of these shoe machinery companies—one making chiefly machines for sewing the sole to the upper in welt shoes, another making chiefly machines for lasting the shoe, and another making chiefly various machines for attaching soles and heels and furnishing material for that purpose—combined in the United Shoe Machinery Company.

Mr. Louis D. Brandeis, whose present attitude toward the company is far from friendly, and whose acquaintance with its methods, by reason of his activity in its organization and subsequently in its board of directors, is thoroughly intimate, recently voiced the opinion of both the friends and enemies of the company, when he stated:[1]

> It was practically an acquisition of the leading shoe machinery businesses by the men who were the ablest, the hardest workers, and, in a certain sense, the farthest seeing of all those engaged in the business. They started out with certain perfectly admirable principles which, I understand, have been adhered to. In the first place, everybody, big and little, was to be treated alike; there was to be no discount for quantity; so that the small manufacturer had the same chance as the large manufacturer, both in respect to service and royalty. The company adopted a system of leasing, which gave an

[1] Hearings before the Committee on Interstate Commerce, U.S. Senate, 62d Congress, pursuant to S. Res. 98, December 15, 1911, p. 1160.

opportunity to the small manufacturer with little capital to go into the business; and the company gave him as good service as the larger manufacturer.

How this system is working appears from the showing made in the hearings before the Congressional committees just described, and from the responses made by the shoe manufacturers in the canvass conducted by the Boston newspaper above mentioned.[1] Both the friends and the enemies of the companies concerned agree that it has served every shoe manufacturer, "big and little, rich and poor"—to revert to Attorney-General Wickersham's phrase—with adequate facilities, absolutely without discrimination, and on the same terms. For all the machines which it furnishes, the royalty paid by the shoe manufacturer for the highest grade of shoes is less than $5\frac{1}{4}$ cents per pair, for the average grade of shoe not over $2\frac{2}{3}$ cents per pair, and for over 164,000,000 pairs of shoes, out of the annual national production, less than $1\frac{1}{3}$ cents per pair. In return for this royalty the shoe manufacturer has the use of the most modern shoe machinery without any initial cost to himself, and simply under the obligation to pay a rental depending solely upon the efficiency of the machinery and the number of shoes which he turns out with it. Besides this service, and *gratis* with it, the company maintains over five hundred mechanical experts to invent new machines, to improve on old designs, to replace obsolete machines with others up to date, and available at the call of the shoe manufacturer at any time to keep all the machinery in repair in the factory of the shoe manufacturer so that no time shall be lost through the idleness of any machine, and to teach the shoe manufacturer's employees in his own factory how to run the machines. For this insurance, as one may call it, to every shoe manufacturer, "big and little, rich and poor," that his working equipment shall always be of the most advanced type and in perfect running order, no extra charge whatsoever is made.

Space forbids quoting from the testimony of the shoe manufacturers regarding this system. Suffice it to say, however, that 97 per cent of the manufacturers who responded declared that they were satisfied with the company and its system; 85 per cent were of the opinion that the company had lowered the cost of manu-

[1] See *Boston News Bureau*, November 10, 1911, to December 6, 1911, inclusive.

facturing shoes; 87 per cent stated that shoe machinery was the only item of cost which was lower today than when the company was organized; 87 per cent thought that the royalties charged by the company were reasonable, and 76 per cent believed that if they had to buy their machines outright, the cost of shoe machinery would be higher.[1]

More important, however, was the overwhelming testimony of small shoe manufacturers, and of numerous large manufacturers who had risen from small beginnings, that their business existence depended, and still depends, upon the leasing system above described, as distinguished from the system of outright purchase; upon the concentration of machinery manufacture and repair service, as distinguished from the variety of manufacture and repair service by different machinery manufacturers; and, above all, upon the absolute equality of treatment toward every shoe manufacturer, "big and little, rich and poor, on the same terms," whether he is a big shoe manufacturer turning out 25,000 pairs of shoes a day, or a little, struggling shoe manufacturer turning out 100 pairs of shoes a day.

A California shoe manufacturer thus expressed the views of many of his fellows:[2]

> The United Shoe Machinery Company in my opinion are the ones who have made it impossible for the large concerns to combine and form one of the greatest trusts in the country and you will find that if this company is put out of business that within two years a great combine will control the shoe manufacturing industry of the United States. . . . . If this company were to be entirely eliminated, I can see where out of the 1,343 factories now manufacturing shoes, 1,000 of these concerns would be wiped out about the same time, while the remainder would flourish and the retail price of shoes would be higher than it is today. . . . . Do not lose sight of the fact that you must not kill competition. I am inclined to the opinion that if the government presses their case against the United Shoe Machinery Company that the government may be responsible for forcing them in with the big shoe manufacturers and forming an immense combine which we smaller manufacturers so much dread.

Over 77 per cent of the shoe manufacturers canvassed in the inquiry above described were confident that the disintegration of

[1] *Boston News Bureau*, December 6, 1911.

[2] Brennan Tannery & Shoe Manufacturing Co., Upland, Cal., quoted in *Boston News Bureau*, December 2, 1911.

this company would be followed by increased cost of production and higher prices of shoes.

Some of the large shoe manufacturers, after vainly trying to get preferential treatment over their weaker brethren[1] complained against this company. Accordingly, Attorney-General Wickersham, in literal enforcement of the Sherman Anti-Trust act, as he has interpreted it, began proceedings to dissolve the company.

The legal questions involved in this situation will be decided in due time by the courts. But the fundamental question: "Has the company conserved business opportunity in the shoe industry?" already has been affirmatively answered with proofs that are of public knowledge. "The ablest, the hardest workers, and, in a certain sense, the farthest seeing of all those engaged in the business"—to quote Mr. Brandeis—without thought of anything except plain business principles, have accomplished in this industry the conservation of business opportunity. Courts and governments and legislatures may undo their labor. But who will have the temerity to say that these business men have not discovered, in the methods which have kept the shoe manufacturing industry both prosperous and independent, the secret of the conservation of business opportunity, for which law and economics have so long vainly sought?

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[1] Hearings before the Committee on Interstate Commerce, U.S. Senate, 62d Congress, S. Res. 98, pp. 2160–2251.